

ENGINEERING DEPARTMENT

Memorandum

TO: Mayor Joe Wardy,
and City Representatives

FROM: Irene Ramirez, P.E. 
Interim City Engineer

DATE: May 13, 2004

SUBJECT: City Council Agenda

COUNCIL AGENDA DATE: May 18, 2004

AGENDA ITEM NO: _____

(page # _____ **)**

The following item has been reviewed, and we recommend approval.

RESOLUTION: **DISTRICT # 8 Representative Anthony Cobos**

Be it Resolved By The City Council Of The City Of El Paso:

That the Mayor be authorized to execute an Agreement by and between the CITY OF EL PASO and the CORCORDIA HERITAGE, INC. allowing for the completion of the Association's proposed improvements to the Concordia Cemetery, some of which are found on or near the City of El Paso's right of way.

If you have any questions on this item please call Ted Marquez at 541-4035.

Cc: Laura Uribarri, Executive Assistant
Adrian Ocequeda, Executive Assistant
Jim Martinez, Interim C.A.O.
Liz Elizondo, City Attorney
Raymond L. Telles, Assistant City Attorney
Edward Drusina, Deputy C.A.O. of Municipal Services
Patricia Aduato, Deputy C.A.O. Building and Planning Services
Daryl Cole, Street Dept. Deputy Director
Engineering Div. Chiefs

2004 MAY 18 PM 2 59
CITY OF EL PASO

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to execute an Agreement by and between the **CITY OF EL PASO** and the **CONCORDIA HERITAGE ASSOCIATION, INC.** allowing for the completion of the Association's proposed improvements to the Concordia Cemetery, some of which are found on or near the City of El Paso's right of way.

ADOPTED THIS 18TH DAY OF MAY 2004.

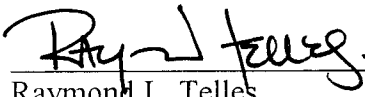
CITY OF EL PASO

Joe Wardy, Mayor

ATTEST:

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:



Raymond L. Telles
Assistant City Attorney

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

AGREEMENT

THIS AGREEMENT ("Agreement") is made this 18th day of May 2004, between the CITY OF EL PASO, ("City") and THE CONCORDIA HERITAGE ASSOCIATION, INC., ("Association").

RECITALS

WHEREAS, pursuant to an agreement dated October 2, 2001, the Association previously donated hardscaping, landscaping, and numerous night decorative lamp posts including the installation of the same in the public right of way on Boone Street and Yandell Drive to the City of El Paso; and

WHEREAS, the Association intended to also donate additional hardscaping, landscaping and night decorative lamp posts, including the installation of same in the public right of way on Stevens Street and Gateway West Boulevard to the City of El Paso; and

WHEREAS, due to unforeseen delays due to numerous situations, including review of technical requirements of such improvements, all of the improvements contemplated in the original agreement were not completed; and

WHEREAS, the Association is interested in completing the entire project and the City of El Paso also desires the completion of the entire project as originally contemplated in the agreement of October 2, 2001;

WITNESSETH

IN CONSIDERATION of the foregoing promises and the mutual covenants, and other good and valuable consideration, it is hereby agreed by and between the parties as follows:

1. The Association will cause the Project to be constructed. The Project shall include, but not be limited by hardscaping, landscaping and installation of twenty-seven decorative night lamp posts in the public right of way area between the Concordia Cemetery (hereinafter referred to as the "Cemetery") property line and the street pavement on Stevens Street, Yandell Drive, Boone Street and Gateway West adjacent to the Cemetery in accordance with plans approved by the City. Said construction shall be completed within one (1) year of the date of this Agreement. To the extent permitted by law, the City hereby designates Boone Street as the primary general public entrance into Concordia Cemetery.

2. The City hereby grants a right of entry under, over, onto and in the public right of way, together with right of reasonable ingress and egress, for the purposes of the construction of the Project in accordance with approved plans and as set out in this Agreement. The scope of the Project will be set forth in the approved plans of the Association and the general project area will be as shown on Exhibit "A", an aerial photograph of the cemetery and surrounding streets, which

is incorporated herein by this reference for all purposes. Noting that some portions of the Project have already been completed pursuant to the original agreement of October 2, 2001, this Agreement is intended to provide additional time to the Association to complete the Project in its entirety. Thus, the rights granted herein shall include all areas to which the Association may require access, which is owned by the City of El Paso.

3. The Association agrees to provide to the City, for its approval and prior to construction, all necessary drawings, plans and specifications, according to applicable City design standards and the policies of the City for such projects. All Project construction and materials shall be subject to inspection and approval thereof by the City. All Project materials must conform to City specifications and are subject to City inspection and testing at Association's sole cost and expense.

4. The Association shall assure its contractor provides all necessary traffic control during the period of construction.

5. The Association agrees that the Project work shall be pursued regularly, diligently, and uninterrupted at such a rate of progress as shall ensure completion of the Project within the time specified.

6. The Association agrees to warrant to the City that all work in connection with the Project shall be performed in a good and workmanlike manner, in accordance with the approved plans. This warranty shall remain in full force and effect for a period of one (1) year from and after the date of final acceptance of the Project. The Association shall ensure that no mechanics lien shall ever be threatened or filed against the property identified as the Project area. Upon acceptance by the City of the Project, the City will maintain illumination portion of the Project.

7. It is understood and agreed by the parties that the purpose of this Agreement is to assure that the public improvements identified in this Project will be constructed in accordance with approved plans, in a good and workmanlike manner, utilizing normal industry standards and dedicated to the City as fit for their intended use, free and clear of any liens and encumbrances.

8. UNTIL THE PROJECT IS ACCEPTED BY THE CITY, THE ASSOCIATION AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES, HARMLESS FROM ANY DAMAGES OR CLAIMS FOR DAMAGES WHICH MAY BE AFFLICTED UPON THE PROPERTIES OF OTHERS OR TO PERSONS, WHETHER ONE OR MORE, ARISING OUT OF, INCIDENTAL TO, OR IN ANY MANNER ASSOCIATED WITH OR ATTRIBUTED TO THE CONSTRUCTION OF THE PROJECT. THE ASSOCIATION SHALL PROMPTLY, AFTER THE EXECUTION OF THIS AGREEMENT, PROVIDE PUBLIC LIABILITY INSURANCE FOR PERSONAL INJURIES AND DEATH GROWING OUT OF ANY ONE ACCIDENT OR OTHER CAUSE WITH A MINIMUM OF TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) PER PERSON, FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) FOR TWO OR MORE PERSONS, AND, IN ADDITION SHALL PROVIDE FOR PROPERTY DAMAGE LIABILITY INSURANCE IN A MINIMUM OF ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) FOR PROPERTY DAMAGE GROWING OUT OF ANY ONE ACCIDENT OR CAUSE. THE ASSOCIATION SHALL MAINTAIN SAID INSURANCE WITH A SOLVENT INSURANCE

COMPANY AUTHORIZED TO DO BUSINESS IN TEXAS. ALL POLICIES SHALL NAME THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES AS ADDITIONAL INSUREDS. THE ASSOCIATION SHALL FILE A COPY OF THE POLICY OF INSURANCE WITH THE CITY. SUCH POLICY SHALL PROVIDE THAT THE INSURANCE CANNOT BE CANCELED OR THE AMOUNT OF COVERAGE CHANGED WITHOUT THIRTY (30) DAYS PRIOR WRITTEN NOTICE TO THE CITY ENGINEER.

9. The Association must execute a performance bond and payment bond for one hundred percent (100%) of the Project costs to secure fulfillment of all the obligations under this Agreement. The bonds will be in a form approved by the City. The bonds must be executed by a corporate surety in accordance with Chapter 2253 Vernon's Annotated Civil Statutes. The bonds shall identify the City as Obligee and shall bind both the Association and the Surety, their successors and assigns, jointly and severally. The bonds shall expressly provide that the Association shall faithfully render performance under this Agreement and shall remain in full force and effect until all requirements of the Agreement have been performed to the City's satisfaction, the City has inspected and approved all required private improvements and has accepted all improvements constructed by the Association. The bonds shall provide that the Surety shall waive notice of any change, including changes of time, to the Agreement. The Surety providing the bond shall designate an agent resident in the County of El Paso to whom any requisite notices may be delivered on whom service of process may be had in matters arising out of suretyship.

10. Upon the satisfactory completion and acceptance of any public improvements by the City, this Agreement shall terminate.

11. The City's Representative in this matter shall be the City Engineer, or designee ("City Representative"). The City Representative will act on behalf of the City to ascertain that the work is accomplished in accordance with the terms of this Agreement. All communications from the Association to the City and vice versa on matters related to this Agreement shall be as provided for hereinafter.

12. The parties hereto agree that the rights under this Agreement are not assignable without express written consent of the other party.

13. GENERAL PROVISIONS:

a. The Association and its contractor shall at all times comply with all local, state and Federal statutes, laws, codes and ordinances.

b. All notices provided for herein shall be sufficient if hand delivered, or sent by certified mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses (or to such other addresses as the parties may designate to each other in writing from time to time):

City:

City of El Paso
Attn: Mayor
#2 Civic Center Plaza
El Paso, Texas 79901-1196

with copy to:

City of El Paso
Attn: City Engineer
#2 Civic Center Plaza
El Paso, Texas 79901-1196

and to Association:

Concordia Heritage Association, Inc.
Kenneth C. Smith, President
6315 Palo Verde Place
El Paso, Texas 79912

c. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof, and no amendment, modification or alteration of the terms shall be binding unless the same be in writing dated subsequent to the date hereof and duly executed by the parties.

d. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

e. The laws of the State of Texas shall govern the validity, performances and enforcement of this Agreement.

f. This Agreement shall be enforceable in El Paso, Texas and if legal action is necessary to enforce it exclusive venue shall be in El Paso County, Texas.

g. The individuals signing this Agreement acknowledge that they are fully authorized to do so with authority to bind their principal.

h. All rights and remedies here enumerated shall be cumulative and none shall exclude any other rights or remedies allowed by law.

i. The Association shall make and keep appropriate records of the Project and each aspect thereof. Said records shall be kept for a minimum of two (2) years after the Project is completed and shall be subject to the inspection of the City upon reasonable notice.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

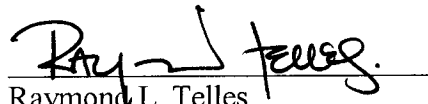
THE CITY OF EL PASO

Joe Wardy, Mayor

ATTEST:

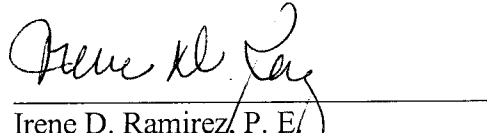
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:



Raymond L. Telles
Assistant City Attorney

APPROVED AS TO CONTENT:



Irene D. Ramirez, P. E.
Interim City Engineer

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of May 2004, by **Joe Wardy**, as **Mayor** of the **City of El Paso**.

Notary Public, State of Texas

CONCORDIA HERITAGE ASSOCIATION, INC.

Kenneth C. Smith, President

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of May 2004, by **Kenneth C. Smith**, the **President of Concordia Heritage Association, Inc.**, on behalf of said Association.

Notary Public, State of Texas